

## THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 60

### Universality, Indivisibility and the Three Generations of Human Rights

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#### I. Introduction: The UDHR as a provisional, providential and political document

1 The Universal Declaration of Human Rights ("UDHR")<sup>1</sup> is the most translated document in the world today; it has apparently been translated into 360 languages of the 6,912 living languages today.<sup>2</sup> Human rights are a kind of international language which every country must translate into its local dialect, which is one of the purposes of these lectures.

2 All persons are the beneficiaries of international human rights law. But this was not always the case, as international law was primarily concerned with inter-state relations. I would like to start with a story about a man, Chief Deskahesh, from Canada. He was a member of the Iroquois tribe of Six Nations, founded by Hiwatha. The Six Nations League had a territorial dispute with Canada and desired home rule, arguing they had enjoyed self-government for many centuries. They rejected an offer to resolve the issue through adjudication and sought international intervention. Chief Deskahesh crossed the Atlantic by boat to reach Geneva where he presented a petition entitled *The Red Man's appeal for justice*, to the League of Nations.<sup>3</sup> As an indigenous

1 GA Res 217A (III), UN Doc A/810 at 71 (1948).

2 <<http://www.unhchr.ch/udhr/>> (accessed 20 May 2008).

3 The Canadian Government issued a statement in response to the petition, which was distributed among the various Assembly delegations: "Statement Respecting  
(cont'd on the next page)

representative of an indigenous group lacking international legal personality, it was difficult for him in 1923 to be heard. Chief Deskaesh tried to enlist the help of the Netherlands as the Six Nations League had good Dutch ties but was blocked by Canadian and British diplomatic intervention as Indians were considered His Majesty's subjects, lacking independent nation status. The Six Nations were under the Canadian Indian Act regime and feared being absorbed by Canada. The Indian Act was seen as an affront to their culture. For example, the tribal system was organised along matriarchal lines where the oldest women wielded political power. This was considered primitive, and the Indian Act sought to replace this with an elective system, to select an Indian Band Council, to prepare native peoples for citizenship. This terminology of advanced nations and backward peoples was extant in the 1920s, with the former owing a duty to uplift the latter to a certain standard of civilisation.<sup>4</sup> This was in reality a *de facto* form of internal colonialisation.

3 There is an article in the 13 June 2008 edition of *The Straits Times* entitled: "Canada says sorry to aborigines at last." This shows how international law does change, which is why Asians have to speak up to try and influence the kind of world we hope to live in. In the past, there was a notion of civilisational superiority, which was a form of racism. Not only did Canadian Indians feel patronised, this was institutionalised as a matter of international law. After World War One, the losers, particularly the Anglo-Hungarian Empire, basically lost all their colonies which were placed as mandates under the care of the Allied powers. The underlying idea was that there were uncivilised peoples who had to be tutored to stand up to the rigours of the modern world. This was the white man's burden. Under Art 22 of the League of Nations Covenant, advanced nations bore the sacred trust of civilisation of raising backward peoples to a certain standard of living. This reflects the Euro-centric orientation of international law.<sup>5</sup>

4 Today, a cardinal principle of international law enshrined in Art 2(1) of the United Nations ("UN") Charter is the sovereign equality of States. In the past, international law institutionalised sovereign inequality through the mandates system.<sup>6</sup> The League mandate system divided colonies into A, B and C mandates. The most advanced

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the Six Nations Appeal to the League of Nation" League of Nations Official Journal (1924) 829–842.

4 C Alexandrowicz, "The Juridical Expression of the Sacred Trust of Civilisation" (1971) 65 AJIL 14.

5 Antony Anghie, "Finding the Peripheries: Sovereignty and Colonialism in 19th Century International Law" (1999) 40 Harvard International Law Journal 1.

6 Nathaniel Berman, "The International Law of Nationalism: Group Identity and Legal History" in *International Law and Ethnic Conflict* (David Wippman ed) (Cornell University Press, 1998) at p 38.

mandated territories were the A mandates which merited provisional recognition; the mandatory power only had to offer administrative assistance. C mandates were so backward that mandatory powers were to treat it as part of their own territory. The first country to emerge out of the mandate system was Iraq in 1932<sup>7</sup> as it was supposed to have become sufficiently civilised, which is ironical in hindsight.

5 In the 1960s, the UN General Assembly adopted the Declaration on the granting of independence to colonial countries<sup>8</sup> which is very important to the Afro-Asian nations or third world. Paragraph 2 reads: “All peoples have the right to self determination.” In essence, the message was that Afro-Asian nations did not want to wait for independence nor have their civilisations graded. The reference to “all peoples” in para 2 was deliberate as the idea was that the lack of development could not excuse delaying independence. The decolonisation movement was reinforced by the human rights movement.

6 No longer can the shield of sovereignty be raised to ward off the sword of external scrutiny. We may recall that many Western Powers refused to have human rights clauses in general treaties as they would be bound by it. For example, they did not want the UN Charter to contain a prohibition against racial discrimination because countries like Australia and New Zealand feared this would open the door to scrutinising how aboriginal peoples or Maoris were treated.<sup>9</sup> As I underscored in my last lecture, in the 1920s, it was Japan who pushed for a racial discrimination clause and in the 1940s, it was China, in the League covenant and UN Charter respectively. It is not as though Asian States have not been interested in combating racism.

7 So we return to Chief Deskaheh, who in the 1920s lacked access to a formal institution to press his peoples’ claims. Today, there is a Permanent Forum on Indigenous Issues<sup>10</sup> and a 2007 UN Declaration on the Rights of Indigenous Peoples.<sup>11</sup> The struggle for certain people or groups to have their human rights recognised has borne some fruit. But,

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7 S G Vesey-Fitzgerald, “The Iraq Treaty 1930” (1932) 17 Transactions of the Grotius Society 55.

8 GA Res 1514 (XV) of 14 December 1960.

9 Oscar I Janowsky, *The Jews and Minority Rights (1898-1919)* (New York: Columbia University Press, 1933) at p 323; Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania, 1998) at pp 159–171.

10 This is an advisory body to the Economic and Social Council: <<http://www.un.org/esa/socdev/unpfii/>> (accessed 20 May 2008).

11 A/RES/61/295.

to be legalistic, the Declaration is a form of non-binding “soft law”.<sup>12</sup> It is important to ascertain whether a human rights instrument that is being invoked is hard (treaty or customary international law) or soft law. When States are reticent towards a certain right, they may adopt a declaration of aspirational standards, but will not subject themselves to treaty obligations.

8 The UDHR was universal as it covered the entire globe, including colonial territories, as Art 2 reflects, which the Latin American countries contended for.<sup>13</sup> Its strong egalitarian commitment was one reason why apartheid-era South Africa refused to adopt the UDHR. It is also not a sexist document as it replaced references to “all men” to the more inclusive “all people”, largely owing to the interventions of the Indian delegate, Mrs Mehta, with Soviet support.<sup>14</sup>

9 The UDHR is revolutionary in addressing non-state actors, extending to every individual and organ of society. This has implications for private law. We tend to think of human rights as belonging to the public law realm of the State and individual. Are states obliged to ensure private employers respect human rights? The “horizontal” application of human rights between private parties is a growing area.<sup>15</sup>

10 The world has changed remarkably from a world of States to a world of States and non-state actors like transnational corporations,<sup>16</sup> non-governmental organisations (“NGOs”)<sup>17</sup> and indigenous groups, with their own special interests. While declaring broad principles is easy, the difficulty lies in the detail, in reconciling, for example, indigenous cultural group norms, which may be sexist, with gender egalitarianism. How do group rights affect the integrity of general human rights?

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12 See, generally, Christine Chinkin, “The Challenge of Soft Law: Development and Change in International Law” (1989) 38 ICLQ 850–866.

13 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

14 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 92–129.

15 Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006).

16 Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003) UN Doc E/CN.4/Sub.2/2003/12/Rev.2 at <<http://www1.umn.edu/humanrts/links/norms-aug2003.html>> (accessed 20 May 2008); Ruggie Report: Protect, Respect and Remedy: A Framework for Business and Human Rights A/HRC/8/5 (7 April 2008) at <<http://www.reports-and-materials.org/Ruggie-report-7Apr-2008.pdf>> (accessed 20 May 2008).

17 UN Declaration on Human Rights Defenders A/RES/53/144 (1998).

11 The UDHR is a provisional, providential and politico-moral document. It is provisional because none of the drafters thought that they had “arrived”; they believed adopting the UDHR was the first step in a long journey. Eleanor Roosevelt hoped this imperfect document “might become the Magna Carta of all men everywhere”.<sup>18</sup> The UDHR was a milestone in forming the cornerstone of the International Bill of Rights, together with the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Social, Economic and Cultural Rights (“ICESCR”).<sup>19</sup> While the ICCPR has an optional protocol which allows individuals to send “communications” to the monitoring Human Rights Committee, the ICESCR had neither a monitoring committee nor an optional protocol from the outset.<sup>20</sup> From this, we see the tendency to treat civil and political rights differently from social-economic rights, despite the overarching principle of indivisibility.

12 The UDHR was a providential document. At the first lecture, I spoke of the 81 torturous meetings over two years before a minimal consensus was attained and the UDHR adopted by the General Assembly on 10 December 1948. It was providential because it was not hijacked or aborted by the onset of the Cold War. Between September to December 1948, while the General Assembly was debating UDHR drafts, the Berlin Blockade took place, and Czechoslovakia faced the threat of a Communist coup. If things had escalated, I doubt the human rights project would have even gotten off the ground. Charles Malik, the Lebanese delegate, said that the UDHR’s adoption was “really something of a miracle” and many NGOs described the UDHR as achieving “the very near impossible”.<sup>21</sup> Human rights entered into a period in the doldrums as it took almost 20 years from that point in time before the ICCPR and ICESCR were adopted in 1966, and it took ten more years for both treaties to come into effect.

13 On the day the UDHR was adopted, Mrs Eleanor Roosevelt wrote in an article that: “... the Arabs and the Soviets may balk – the Arabs for religious reasons and the Soviets for political ones.”<sup>22</sup> Saudi

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18 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 231.

19 993 UNTS 3. See Louis Henkin ed, *The International Bill of Rights* (New York: Columbia University Press, 1981).

20 A committee was established in the 1980s and now there are arguments for having an optional protocol to the ICESCR: Philip Alston, “Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social and Cultural Rights” (1987) 9 HRQ 332.

21 Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania, 1998) at p 237.

22 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 163.

Arabia abstained from voting for the UDHR because of two clauses: Art 16 (equal rights in marriage) and Art 18 (religious freedom) as they had problems with these clauses. Saudi Arabian delegate Baroody argued that Art 16 reflected Western standards for family relations and ignored the standards of more ancient civilisations. However, in not supporting the UDHR, Saudi Arabia was breaking ranks with the other Muslim nations such as Syria, Iran, Turkey and Pakistan.<sup>23</sup> The Art 18 right to have or to change a religion was a deal-breaker<sup>24</sup> for Saudi Arabia. The Soviet bloc was concerned with national sovereignty arguments, receiving French delegate Rene Cassin's rebuke that the Nazis in the 1930s had argued before the League that criticising another country's human rights performance intruded into its national sovereignty. When States raise sovereignty arguments today, this is usually more political rhetoric than a substantive legal argument, as "sovereignty" is a problematic term in international law.<sup>25</sup>

14 Lastly, the UDHR was a politico-moral document; it was a "common standard of achievement", not legally binding, as Mrs Roosevelt herself acknowledged. It was a manifesto whose authority was primarily moral. Even though in its origins the UDHR was a General Assembly resolution, having the status only of a recommendation, resolutions can evolve over time to become "hard" customary international law ("CIL"). Some argue that the UDHR embodies CIL *in toto*. This is significant because CIL is universally binding while treaties will only apply to state parties. There are particular legal tests to ascertain whether a norm is CIL. I would suggest that in examining the UDHR, one should look at each article individually to ascertain whether it satisfies the tests of demonstrating the requisite state practice and *opinio juris*.<sup>26</sup> The UDHR has had profound political impact as a model for more than 90 domestic constitutions and laws protecting fundamental human rights. It remains the most authoritative summary of international human rights.

## II. Fundamental liberties in Singapore

15 Part IV of the Singapore Constitution, aside from a clause relating to educational rights, relates to civil and political rights. Our

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23 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 184.

24 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 184.

25 W Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law" (1990) 84 AJIL 866.

26 Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law" (1995–1996) 25 Ga J Int'l & Comp 287 at 314.

Constitution is very succinct and brief when it comes to rights, reflecting the rights thinking of the 1960s.

16 In terms of socio-economic rights such as social security, work, rest, adequate standard of living, participation in the cultural life of the community – these might exist in Singapore and I shall argue the case shortly. But before I do, I would like to draw your attention to a Singapore case, *Cheong Seok Leng v PP*,<sup>27</sup> where it was argued that national service violated the Art 10 prohibition against forced labour. Chan Sek Keong J (as he was then) rejected this as Art 10(1) provides that: “Parliament may by law provide for compulsory labour for national purposes.” This demonstrates that such issues do appear before our courts.

17 Certain rights were deliberately ignored or omitted from Pt IV. In 1966, a constitutional commission, chaired by Chief Justice Wee Chong Jin, was tasked with making recommendations about how to protect racial and religious minorities. Its report<sup>28</sup> was debated in Parliament and it is worth studying these fascinating debates which present a very rich understanding of our constitutional history. The Commission recommended the inclusion of four particular rights in the Constitution, which were not adopted.

18 First, the proposal to insert an anti-torture clause through introducing a new Art 13 in the Singapore Constitution which would read: “No person shall be subject to torture or to inhumane or degrading punishment or treatment”, which largely reflects or parallels Art 5 of the UDHR. In 2005, arguments were raised in court that this norm was CIL and part of Singapore law, which I shall address later.

19 Second, the right to property. After Separation, Singapore did not import the Malaysian Art 13 property rights clause, which provides that the State cannot take property without providing “adequate compensation”. The Wee Commission report expressly referred to Art 17 of the UDHR, the right not to be arbitrarily deprived of property, which was considered a fundamental right. The Commission recommended incorporating a modified constitutional property clause requiring compensation “on just terms”. This formulation was meant to be “a just and fair balance” between “the public interest” and “private ownership”.<sup>29</sup>

20 The rejection of this clause reflects the Singapore school of human rights and the developmentalist State. The argument is that if

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27 [1988] SLR 565 at [32]–[35].

28 *Report of the Constitutional Commission 1966* (Singapore: Government Printer, 1966).

29 *Constitutional Commission Report 1966* at paras 41–42.

compensation had to be paid on just terms for expropriated or acquired property, this would be economically prohibitive and “unsuitable to a developing nation”.<sup>30</sup> The Government would be handicapped in implementing national development programmes. For example, if market value had to be paid for fire sites, these could not be cheaply acquired for redevelopment. The Government wished to avoid the “flood of litigation”<sup>31</sup> a property rights clause might engender. Instead, such issues would be handled by an appeals board established under the Land Acquisition Act.<sup>32</sup> The issue of property was de-constitutionalised. This illustrates, from the practice of one State, the difficulties in arguing that the right to property is CIL. Obviously, if we study the more than 190 countries in the world, not all recognise this right. We see Singapore’s Economic First policy, the idea of having a Strong State able to control land resources, coming strongly into play even in Singapore’s first year as a republic.

21 Interestingly, the PAP Government was a lot more ideological in the 1960s. J B Jeyaretnam wrote a letter to *The Straits Times* arguing that without a property clause, private property rights would be reduced to “the benevolence of the government”.<sup>33</sup> Showing its socialist roots, the Government responded: “... if you want a more just and equal society to emerge, the property rights of the privileged few has to give way to the living rights of the many.”<sup>34</sup> Today, this ideology seems to have been displaced by a more legalistic mindset. In 2003, opposition MP Chiam See Tong asked Parliament to review the Land Acquisition Act.<sup>35</sup> *The Straits Times* was covering an issue concerning how a certain church in Kim Keat Road had to give up property at \$1 for 200 sq m. MP Chiam argued that handing out nominal payments for compulsorily acquired land was an “outright confiscation” tantamount to violating human rights. The PAP Government no longer referred to the living rights of the Many but replied in these terms: when we take away your property, it is in accordance with law<sup>36</sup> – technical legalism, we follow all the correct procedures.<sup>37</sup>

22 Third, the Wee Commission recommended including a right to vote; its omission from Pt IV is in my opinion one of the greatest gaps in

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30 Ahmad bin Mohd Ibrahim, State Advocate-General, “The New Constitution for Singapore” *The Straits Times*, Letters (22 December 1965).

31 E W Barker, 25 *Singapore Parliament Reports* (17 March 1967) at col 1389.

32 Cap 152, 1985 Rev Ed.

33 J B Jeyaretnam, Letter, *The Straits Times* (8 January 1966).

34 Yaacob bin Mohamed, Minister of State, Prime Minister’s Office, “To safeguard the rights of the many” *The Straits Times* (8 January 1966).

35 76 *Singapore Parliament Reports* (15 August 2003) Land Acquisition Act at col 2458.

36 76 *Singapore Parliament Reports* (15 August 2003) col 2458 at 2462–2463.

37 76 *Singapore Parliament Reports* (15 August 2003) cols 2462–2463.

our list of fundamental liberties. We are a democratic nation and integral to that is the power to choose our governors. The Wee Commission pointed out that Singapore citizens had had little experience with General Elections and had only voted twice at general elections to choose their own Government in 1959 and 1963. It could not be assumed that “they have grown up to cherish an inalienable right, the right to be governed by a government of their own choice” expressed in periodic, secret elections.<sup>38</sup> Article 21(3) of the UDHR provides that popular will shall be the basis of Government to be ascertained by periodic and general elections, conducted along the basis of universal and equal suffrage. While this declares a general principle, it does not, after the colonial mindset, prescribe a uniform solution; it leaves the finding of social and political solutions to be worked out within the parameters of the principle.

23 Although there is no express constitutional right to vote, it may be argued that there is an implied one, stemming from Art 66, which provides for the holding of regular General Elections. Indeed, when Parliament in 2001 debated the Parliamentary Elections Act, confusion arose over whether voting was a right or duty. This elicited a statement from the Attorney-General which the Government endorsed:<sup>39</sup>

We have a parliamentary form of government. The Constitution provides for a regular General Election to make up a Parliament, and establishes representative democracy in Singapore. So the right to vote is fundamental to a representative democracy, which we are, and that is why we have the Parliamentary Elections Act to give effect to this right.

24 The idea of an implied constitutional right to vote is normatively desirable, as a matter of democratic principle. There are precedents from countries with the Westminster parliamentary model where implied rights are derived from constitutional structures.<sup>40</sup> Today, it is unclear, in the absence of conclusive judicial determination, whether the right to vote in Singapore is an implied constitutional right or a statutory one.<sup>41</sup>

25 What does human rights law have to do with democratic government? This is where human rights gets a bit dangerous; if a human rights violation relates to denied access to counsel, these are discrete incidents. However, Governments tend to shy off human rights

38 *Constitutional Commission Report 1966* at para 43.

39 73 *Singapore Parliament Reports* (16 May 2001) “Is Voting a Privilege or a Right” at col 1726.

40 The implied freedom of political communication, in the context of the Australian Constitution: *Nationwide News Pty Ltd v Wills (Nationwide)* (1992) 177 CLR 1.

41 Thio Li-ann, “Recent Constitutional Developments: Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs” [2002] Sing JLS 328.

where this implicates political power and challenges authoritarian structures. As far as Singapore is concerned, having an electoral system where a Government gains power by default is hardly ideal;<sup>42</sup> I am alluding to the fact that very often Singaporeans do not get a chance to vote as there are no competing candidates; how is political will to be expressed if there is no choice between viable candidates? It is not the Government's duty to ensure viable competitor candidates.

26 However, human rights standards which relate to universal, equal suffrage are useful in evaluating our electoral system, which is formally structured upon the one man one vote principle, although each vote has different weight. If you live in a six-member Group Representation Constituency ("GRC"), your one vote can send six people to Parliament. If you live in a Single Member Constituency, your one vote will only elect one parliamentarian. Clearly, there is a disparity in terms of voting strength. As far as GRCs are concerned, this is an exception to the "first past the post" system but the underlying rationale of ensuring minority legislative representation, of entrenching multi-racialism, is one I doubt many will contest. But the way this is accomplished is open to debate. The original plan was to have two to three-member GRCs, which has now ballooned to six. Constitutionally, the requirement is only to field one minority person per GRC, so if you increase the size of GRCs, decreasing the number of GRCs, you decrease the yield of minority MPs. Parliament has a fixed number of seats. If you have huge GRCs, you might actually defeat the purpose of the GRC system by enlarging GRC team sizes, to facilitate non-constitutional objectives like the town council and community development council schemes. Even if this was problematical, does human rights law speak to this issue? Human rights law does not prescribe a solution; it does provide principles like universal, equal suffrage, but the construction of systems is then left to committed citizens.

27 The fourth proposal was to include a right to a judicial remedy. The Wee Commission referred to Art 19 of the Guyana Constitution which declares the right to apply to court to hear and make appropriate orders in relation to rights violation and proposed a similar clause. Articles 8 and 10 of the UDHR provide for "fair and public hearing by independent and impartial tribunal in determination of rights and obligations and of any criminal charge". If this had been included, problems of incompatibility would arise in relation to judicial review ouster clauses.<sup>43</sup>

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42 Thio Li-ann, "The Right to Political Participation in Singapore: Tailor-Making a Westminster-Modelled Constitution to fit the Imperatives of 'Asian' Democracy" (2002) 6 Singapore Journal of International & Comparative Law 516.

43 Internal Security Act (Cap 143, 1985 Rev Ed) s 8; Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed) s 18.

28 Part IV of the Constitution does not contain any socio-economic rights, although this was discussed before the Wee Commission in 1966. An Indian group proposed including seven basic socio-economic rights such as the right to work, to social security, to collective bargaining, and protection of migrant workers.<sup>44</sup> However, this was discounted as such rights were not considered justiciable and unsuited to adjudication as their realisation was contingent on state capacity and resources. Welfare legislation and policy was the preferred route to addressing social welfare issues.<sup>45</sup> Notably, by becoming party to the Convention for the Elimination of All Forms of Discrimination against Women (“CEDAW”)<sup>46</sup> and the Convention on the Rights of the Child (“CRC”),<sup>47</sup> socio-economic rights may well become part of the local political discourse.

29 What about the common law, which is based on the judicially affirmed principle of residual liberty?<sup>48</sup> Singapore knows no right to privacy although some argue there is a developing common law right to privacy. In 1993, then Foreign Minister Wong Kan Seng at the Vienna world conference<sup>49</sup> noted that many countries would consider the Misuse of Drugs Act<sup>50</sup> permitting urine-testing for drugs if one is acting suspiciously as violating privacy. In Singapore, this is not a rights issue but a smart criminal law policy to control drug trafficking. Notably, Art 12 of the UDHR not only protects the right against arbitrary interference with privacy, but also affords protection against “attacks” upon a person’s honour and reputation. In Singapore, honour and reputation are heavily protected, and these are common law rights. This is apparent from the case law on political libel which affords politicians the same protection as private persons, and, sometimes, even better protection, when it comes to assessing damages as the fact you are a public figure may translate into a higher quantum, owing to greater reputational harm.<sup>51</sup>

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44 “Indians ask for seven basic rights in S’pore Charter”, *The Straits Times* (3 March 1966) at p 5.

45 Eg, Destitute Persons Act (Cap 78, 1990 Rev Ed); Work Injury Compensation Act (Cap 354, 1998 Rev Ed); Community Care Endowment Fund Act (Cap 49B, 2006 Rev Ed).

46 GA Res 34/180, UN GAOR, 34th Sess, Supp (No 46), UN Doc A/34/46 at 193.

47 GA Res 44/25, annex, UN GAOR, 44th Sess, Supp (No 49), UN Doc A/44/49 (1989) at 167, entered into force 2 September 1990.

48 *Cheong Seok Leng v PP* [1988] SLR 585 at [57]–[59].

49 “The Real World of Human Rights” 16 Vienna 1993, Singapore Government Press Release No: (20/JUN, 09-1/93/06/16) reproduced in [1993] Sing JLS 605 at 607 (“Vienna Statement”).

50 Cap 185, 2008 Rev Ed.

51 *J B Jeyaretnam v Lee Kuan Yew* [1992] 2 SLR 310; *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97; *Goh Chok Tong v Chee Soon Juan* [2005] 1 SLR 573.

30 Reputation is valued so highly in Singapore that in *Chee Siok Chin v PP*,<sup>52</sup> it seemed to extend to the reputation of institutions, such as the Central Provident Fund Board. My own view is that a happier balance or *via media* should be realised between democratic free speech principles and reputational interests. However, in *Malcolmson Nicholas Hugh Bertram v Naresh Kumar Mehta*<sup>53</sup> (“*Bertram*”), the court unusually departed from the usual reluctance judicially displayed towards the decisions of or influenced by the European Court of Human Rights. This case dealt with the tort of harassment, where a former employee sent numerous e-mails and SMS messages to his former employer. The employer sought an injunction. Lee Seiu Kin JC approvingly cited Millet LJ in the English case of *Fine v McLardy*<sup>54</sup> where he stated that the absence at common law of a tort of interference with privacy, constituted “a serious blot on our jurisprudence” but that this could soon be “a thing of the past” with the “imminent incorporation” of the European Convention on Human Rights (“ECHR”)<sup>55</sup> which guaranteed individual privacy. The learned JC said that “the time has come in Singapore” to have a right of privacy or the tort of harassment, more precisely.

31 *Bertram* should be contrasted with *Chee Siok Chin v PP*, another case of the same vintage, in a judgment of Justice Rajah. Here, there was a reluctance to adopt the reasoning of the European Court of Human Rights or English law on public order cases as “the infiltration of European law into English law has significantly reshaped English legal contours in this particular area”.<sup>56</sup> This type of reasoning resounds with that offered in Parliament in 1989<sup>57</sup> where there was an admonition not to follow English case law overly influenced by European case law which weighs individual rights more heavily. If you start importing this in, you would have to readjust rights adjudication in favour of the individual, which is not necessarily a bad thing.

32 Why are Singapore judges variously enthusiastic and reluctant about importing European Court of Human Rights type reasoning? The reason lies in the fact that in *Bertram*, two private parties were involved while in *Chee Siok Chin v PP*, the relevant parties were the Government and private individuals. You see this trend in other jurisdictions<sup>58</sup> as well;

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52 *Chee Siok Chin v PP* [2006] 1 SLR 582 at [65].

53 [2001] 4 SLR 454

54 *Fine Robert v McLardy Eileen May* [1998] EWCA 3003 (6 July 1998).

55 ETS No 5.

56 [2006] 1 SLR 582 at [5].

57 Law Minister S Jayakumar, 52 *Singapore Parliament Reports* (25 January 1989) at cols 463–470.

58 *Qi Yuling v Chen Xiaoqi*: Dispute over Infringement of a Citizen’s Basic Right to Receive Education through Infringement of Right of Name Protected by  
(cont’d on the next page)

courts appear to be at greater liberty to be more inventive and rights-protective when a public law case involves two individuals. When it comes to a Government and citizen, the courts decline to apply rights-oriented foreign jurisprudence, particularly, European law.

### III. Three generations of rights and positive state duties

33 In thinking of rights, we are no longer exclusively concerned with “thou shalt nots” or negative liberties where the Government is enjoined not to act in a certain manner, such as the obligation not to torture an individual or deprive a person of due process, typical first generation rights. In speaking of second generation socio-economic rights and third generation rights, this implicates positive government duties whereby the Government is expected, for example, to embark upon a housing programme or to provide public education.

34 We now have to grapple with third generation rights or the rights of peoples;<sup>59</sup> human rights relate to the rights of individuals, but it has now expanded to include collective entities, groups of peoples, as well. No longer are we focused merely on the State versus citizen scenario; now we talk in terms of the relationship and obligations between States as well.

35 Third generation rights have been criticised as desirable goals rather than rights. These would include the right to development, to peace, to a healthy environment, to self-determination. When it comes to a healthy environment or the right to peace, its realisation is contingent on the behaviour of more than one State. Critics have termed third generation rights as a distraction, to detract from real human rights issues by postulating abstract claims. I am underscoring this as Singapore has stated repeatedly that it considers the right to development (“RTD”) a fundamental, inalienable right. It is incumbent on us to unpack what the content of the RTD is. Briefly, this must transcend mere economic growth; it is a right to a human rights based approach to development which should include some degree of equitable distribution and public participation; it is not just attaining GDP but GDP plus.<sup>60</sup>

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Constitution 5 Zuigao Renmin Fayuan Gongbao (Gazette, PRC Supreme Court) 158 (2001).

59 Philip Alston ed, *Peoples Rights* (Oxford University Press, 2001).

60 Thio Li-ann, “Taking Development Seriously: Beyond the Statist Rhetoric of the Human Right to Development in ASEAN States” in *Human Rights and Development: Approaches to the Reform of Governance in Asia* (DK Srivastava & C Raj Kumar eds) (Butterworths LexisNexis, 2006) at pp 47–64.

#### IV. Universality of the UDHR

36 Commentators have argued that the UDHR is under siege because of radical cultural relativism. In my last lecture, I pointed out that the UDHR was not the ethnocentric product of a single author but many authors from various Asian, African, Islamic, Confucianist, Marxist, and Catholic backgrounds and traditions. What was produced after broad consultation was a consensus document, not a doctrinal agreement.

37 In 1993, most countries at Vienna affirmed that all human rights are universal, indivisible and inter-related, and in the Vienna Declaration,<sup>61</sup> they affirmed the UDHR itself, which provides a useful platform for commencing human rights discourse.

##### A. *Between the metaphysical and the material*

38 Human rights law is not based on a neutral ideology<sup>62</sup> and has been challenged; it has elicited negative reactions in some quarters on two counts. Firstly, the idea that human rights law is a kind of fundamental secularist law.<sup>63</sup> In my last lecture, I mentioned that certain countries, particularly Brazil and Holland, wanted to incorporate a God Clause,<sup>64</sup> they wanted to ground human rights in a belief in God, and the Soviets objected to this. Today, the unhappiness directed at the perception that human rights demands a commitment to radical secularism is seen in the adoption of theocentric instruments like the Cairo Declaration of Human Rights in Islam,<sup>65</sup> a counter-force to a militant secularism.

39 However, in examining the Art 1 UDHR drafting process, it was the Chinese delegate, P C Chang, who brokered an agnostic conception of human rights. His approach was pragmatic, avoiding metaphysical questions. Most delegates considered that questions of God and philosophy could not be decided by vote.<sup>66</sup> Chang basically said that the foundations of human rights could be kept open-ended and plural. This is one reason why the document was so successful because it does not

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61 Vienna Declaration and Programme of Action A/CONF.157/23 (12 July 1993) (“Vienna Declaration”).

62 Makau wa Mutua, “The Ideology of Human Rights” (1996) 36 *Virginia Journal of International Law* 512.

63 Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press, 1999) at pp 53–95.

64 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 284–289.

65 5 August 1990 (Islamic Conference of Foreign Ministers).

66 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at p 285.

espouse any particular conception of secularist ideology. It does not require one to abandon all religious and philosophical norms in capitulation to a secular idolatry. Eleanor Roosevelt attributed the source of rights to “a divine Creator” who had placed “a divine spark in men” but appreciated the fact that other people wanted Art 1 of the UDHR to be “expressed in such a way that they could think in their particular way about this question”.<sup>67</sup> Thus, it was drafted in a way to accommodate many bases for human rights.

40 In examining the work of contemporary human rights scholars, an important figure is Professor Abdullahi An-Naim, a noted Sudanese human rights Muslim scholar based in Emory University. He advocates this: if you want human rights to go global, you must go local. People must have some degree of affection for it. You cannot dictate to a person of faith that they must throw away their religion in order to embrace human rights; you need to go into a religion and culture and find the common norms shared with human rights ideology to feed a broad-based conception of rights, by brokering cross-cultural dialogue and to engage worldviews beyond secular liberalism, to promote acceptance of human rights law.<sup>68</sup>

41 Another negative reaction is the false perception that human rights ideology requires a commitment to radical individualism. An excessive focus on rights degrades liberty into licence. While an individual is of intrinsic worth, individualism, the product of excessive focus on rights, is a different matter entirely. There was a felt need in some quarters to respond to this inadequate balancing of rights and responsibilities, to redress the perception that a rights focus had become a synonym for cultivating egoism, antagonism and licentiousness. While rights are self centred and a primarily legal construct, duties are other-centered and primarily a moral construct.<sup>69</sup>

42 There are two interesting documents which may be seen as a reaction against individualism and rights talk. I discussed the 1998 Universal Declaration of Human Responsibilities<sup>70</sup> at the last lecture. The second is the draft Declaration on Human Social Responsibilities.<sup>71</sup> These seek to foreground duties, and will be discussed in the third

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67 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002) at p 42.

68 Abdullahi An-Naim, “Human Rights in the Muslim World” (1990) 3 *Harvard Human Rights Journal* 13.

69 Sir John Laws, “Beyond Rights” (2003) 23 (2) *OJLS* 265.

70 Interaction Council website <<http://www.interactioncouncil.org/udhr/declaration/udhr.pdf>> (accessed 20 May 2008).

71 UN Commission on Human Rights, Promotion and Protection of Human Rights: Human Rights and Human Responsibilities, annex I, UN Doc. E/CN.4/2003/105 (2003). See also John Knox, “Horizontal human rights law” (2008) 102(1) *AJIL* 1.

lecture in relation to whether the instrument framing an ASEAN human rights mechanism should include a chapter on duties, of which there are many kinds.

43 John Humphrey's draft of the first article referred to duties owed to the State and international community:<sup>72</sup>

Every one owes a duty to his state and to the United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good.

44 P C Chang argued that a document on rights should not start with a statement of duties which limit rights, but should appear after the rights had been articulated. Thus, the first draft article became the final penultimate Art 29 which refers to the duties of man "alone" and "in community". Chang said the function of human rights should not be to promote selfish tendencies but to promote man's moral stature, which is very Confucian.<sup>73</sup> The UDHR cannot be said to be individualist as it starts with brotherhood and ends with community.

45 A distinction needs to be drawn between collectivism, communitarianism and individualism. Individualism is not the vision of man and society promoted by the UDHR; but human rights law does oppose collectivism which is not to be confused with communitarianism, and this is apparent in some of our case law. Collectivism is basically the idolatry of the organic nation-State, where the State and people are an indivisible One; a form of totalitarianism and statism as in the case of the Fuhrer's Will and the European brand of personality-based collectivism. Communitarianism actually recognises the difference between the State and society, and the importance of mediating civil society groups and institutions like trade unions, associations and religious groups. The UDHR holds this vision of man and society.

46 The UDHR does not have a minorities' clause, despite the complex series of minority rights treaties existing during World War Two.<sup>74</sup> Minorities at international law mean ethno-cultural, religious and linguistic minorities, not groups defined by lifestyle or numbers. It was feared that minorities would be disloyal fifth columns, causing inter-state conflict. Hitler, for example, encouraged the Sudeten

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72 AC 1/3; Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at p 241.

73 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at p 240.

74 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 269–280.

Germans in North Czechoslovakia to complain of maltreatment to the League. Nazi Germany then declared a blood-based protectorate over Germans outside Germany, based on the theory of the German *volk*. There was a great deal of agitation over this prior to World War Two and the British sought to appease the Germans at Munich in 1938 by partitioning Czechoslovakia. The omission of a minorities' clause stems directly from the fresh memory of how Hitler manipulated minority groups to further expansionism.

47 Consequently, the UDHR has an individualist orientation; its theory is that if States do not discriminate against any one and if individual rights are protected, then the rights of individuals belonging to minorities would be protected. This is an assimilationist ethos. Interestingly, there were no minorities' instruments until the end of the Cold War, after the Berlin wall was sanded down, as the resurgent quality of national identity was recognised as a compelling political force. In 1992, a UN declaration on minority rights was adopted.<sup>75</sup>

48 Interestingly, these attitudes and developments may be seen to parallel Singapore history. The Constitution does not contain any minority rights and Art 152 provides that the Government bears the responsibility "constantly to care for the interests of racial and religious minorities", which focuses on state duties, not human rights. When we were still idealistic in the early days, Foreign Minister Mr Rajaretnam, himself a minority group member, argued that minorities should not press for special rights. If they did, majority groups would do likewise and, consequently, minorities would be oppressed. He urged minorities to focus on individual rather than group rights, and not make race an issue. However, Singapore policy underwent a *volte-face* in 1988 with the advent of the GRC constitutional amendment which restructured the electoral system in order to protect the interests of racial minorities. Race remains an important factor both in law and politics.

### **B. Social-economic rights and degrees of justiciability**

49 Socio-economic rights are often criticised as being non-justiciable, but this may be challenged. Today, socio-economic rights have become constitutionalised, as in the South African and Timor Leste constitutions. If you start putting rights in legal form, this may spark litigation.

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75 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General Assembly resolution 47/135 of 18 December 1992. See Thio Li-ann, "Resurgent Nationalism and the Minorities Problem: The United Nations and Post Cold War Developments" (2000) 4 Sing JICL 300.

50 One of the cases heard by the International Court of Justice<sup>76</sup> related to the security fence or Wall which Israel built in the Palestine Occupied Territory. Human rights were raised in arguing that the Wall violated ICESCR rights by preventing Palestinians from going to work, which harmed their right to an adequate standard of living. Obviously, the developing jurisprudence on social-economic rights are matters even the World Court takes cognisance of. To advance the argument that socio-economic rights are justiciable, the indivisibility of socio-economic rights and civil-political rights has been emphasised: “Democracy, development and respect for human rights are interdependent and mutually reinforcing.”<sup>77</sup>

51 Furthermore, human rights violations are indivisible in that both civil-political rights and socio-economic rights may be violated in the same instance. This is apparent in *Hijirizi et al v Yugoslavia*<sup>78</sup> (“*Hijirizi*”) which came before the Committee which oversees the Convention against Torture (“CAT”),<sup>79</sup> whose mandate relates to classic civil and political rights. It concerned the *Roma*, more popularly known as “gypsies” who came not from Egypt but from India. Roma are the *pariahs* of Europe and their marginalisation and maltreatment in Europe is a major human rights problem.

52 Roma belong to the poorer sector of society and are usually stateless. In *Hijirizi*, there was a Roma settlement in Yugoslavia. One day, some Yugoslavs circled this settlement and began to taunt and threaten them. This caused a lot of fear which the CAT Committee found amounted to torture. They were physically attacked, their houses razed to the ground, causing them to hide in the woods where they went hungry. The CAT Committee stated that not only did the perpetrators hurt and torture their victims, the Roma had been forcibly evicted, depriving them of housing, a socio-economic right. This recognised the importance of appreciating the indivisibility of rights, and rights violations.

### C. Socio-economic rights in the UDHR

53 Let us turn our attention to socio-economic rights in the UDHR itself. The historical foundations of socio-economic rights reside in conceptions of charity, whether Biblical charity, Koranic benevolence

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76 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, ICJ, 9 July 2004.

77 Vienna Declaration para 8.

78 Committee against Torture: Communication No 161/2000, CAT/C/29/161/2000: Violence against Roma.

79 GA Res 39/46, annex, 39 UN GAOR Supp (No 51) at 197, UN Doc A/39/51 (1984), entered into force 26 June 1987.

or the Confucian “ta tao”. When anything is placed within a legal document, you change its character as rights are enforceable claims against State and society.

54 In placing socio-economic rights in the UDHR, the framers rejected the welfare or obligations approach towards social welfare, being influenced by Latin American socialism, particularly the 1917 Mexican socialist constitution. When John Humphrey was preparing the first draft of the UDHR, he was basically working off the experience of many countries. It is a misrepresentation to portray the West as opposed to socio-economic rights as many Western countries are welfare States.<sup>80</sup> The debate was not over whether socio-economic rights were important but how they were to be implemented, with one view being that socio-economic rights could not be litigated in the courts. Owing to this ideological debate, the original plan to have a single human rights treaty gave way to a bifurcation of the proposed treaty into the ICCPR and ICESCR.

55 There was unfamiliarity with respect to how to treat socio-economic rights so Rene Cassin, bringing the expertise of a civilian draftsman, drafted a preamble as a prelude to the section on socio-economic rights (Arts 22–27 of the UDHR). His intent was to ensure there was a flow and integrity to the document as a whole, and to set out the philosophy underlying socio-economic rights.<sup>81</sup> Article 22 reads:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

56 First, Cassin wanted to emphasise that socio-economic rights were rights, not privileges. Not only does Art 22 provide for a right to social security, Art 22 is a mini preamble introducing Arts 23–27. It calls for “national effort” and “international cooperation.” This is interesting as socio-economic rights address poverty issues. Poverty cannot be cured by unilateral economic policy. So, embedded in the notion of socio-economic rights is the need for international co-operation. This has great significance and was replicated in the ICESCR which provides that States are not only responsible for its own citizens, but citizens of other States.<sup>82</sup> So, if a country is a member of international financial

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80 Daniel J Whelan & Jack Donnelly, “The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight” (2007) 29 HRQ 908 at 928.

81 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 222–230.

82 ICESCR Art 2.

institutions like the World Bank or International Monetary Fund, which is able to influence global economic policy, that country has to take human rights considerations into account when formulating policy.

57 India argued that poverty could not be cured by the stroke of a pen; it was pleased at the inclusion of the words “through *national effort and international co-operation* and in accordance with the *organization and resources* of each State” [emphasis added]. This showed firstly that the UDHR adopted a middle of the road approach in not stipulating any particular economic system; it neither endorsed capitalism nor communism. Secondly, it recognises that the provision of socio-economic welfare is contingent on a State’s resources, and some countries are richer than others; what you can do must be measured against the size of your granary or storehouse. The appreciation that the realisation of socio-economic rights was indispensable to individual dignity and the free development of their personalities was also important.

58 Articles 23 and 24, in safeguarding the rights to work, leisure and holidays with pay, reflect the socialist principle that labour is not a commodity. In Singapore, we probably think that we need holidays so individuals can be more economically productive. However, the drafting debates show this would be considered too utilitarian a concept. The right to a holiday and leisure is considered a good in itself, in nurturing personal development.

59 One of the interesting debates revolved around a draft of Art 23(3) of the UDHR which concerned the right to a just and favourable remuneration ensuring “*for himself and his family* an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection ...”. The great debate was between Cuba and the US. Cuba argued that a person should have a salary enabling him to meet the needs of his family, whether this included parents or children. The Americans led by Eleanor Roosevelt responded that in calculating wage, this should be for work done and not family needs as such. There reflects a divide in social philosophy.<sup>83</sup>

60 UDHR rights are cast in abstract general principles. Consider Art 3 which relates to the right to life, liberty and property, a right all constitutional lawyers are familiar with. However, there were debates during the Committee sessions as to whether the right to life included the right to euthanasia, abortion or capital punishment. The Committee chose not to make conclusive determinations on these contentious

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83 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 181–185.

issues but to state a general principle, leaving these politicised issues for future debate.<sup>84</sup>

61 While workers' rights relate to people with jobs, the adequate standard of living in Art 25(1) of the UDHR relates to those who do not have jobs. This reads:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

62 Housing and medical care are rights found in most Latin American constitutions. However, food and clothing are relatively new components of a minimal standard of living; the Philippines delegate suggested including food. At this stage in the drafting, the clause was getting too wordy. The Western States wanted to delete the reference to food but failed in the face of opposition from the Chinese delegation, who argued that as a facet of Confucian benevolence, the ruler's function was to provide food and clothing.<sup>85</sup>

63 There was a clerical omission in not placing the term "social" before "security"; this had appeared in the earlier Art 22.<sup>86</sup> What was also a subject of great debate was the use of the term "security"; the Russians objected and wanted to use the term "social insurance" to import the idea that the State underwrites all the needs of its citizens, advocating maximal state intervention. The US and UK preferred a more minimalist welfare State, so they opted for the term "social security" in rejecting the Communist model. An interesting intervention came from the Saudi Arabian delegate, a Lebanese Christian called Jamil Baroody who was childhood friends with King Faisal. He argued that Westerners were coming late to the idea of social welfare, compared to Islam which has had the idea of social justice since the 14th century,<sup>87</sup> where religious tithes or *zakat* were made to look after the poor and unemployed. P C Chang also pointed out that Confucianism has espoused the notion of benevolence for 2,500 years.

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84 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 39–41.

85 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 192–199.

86 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 199–204.

87 Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at pp 204–205.

64 All States were apparently eager to have their own values and culture recognised and affirmed before an international assembly. I might also add one further fact of interest to Singaporeans. When Cuba argued for a family wage rather than a working wage, the delegate said that insufficient calories make poor citizens, which provides much food for thought.<sup>88</sup>

#### **D. Monitoring socio-economic rights**

65 How do we monitor socio-economic rights, which are couched in the form of progressive realisation as opposed to civil-political rights, which are immediate obligations? How does one litigate a right to work or to education? This is contingent upon available resources.

66 There is a need to distinguish the various types of obligations to respect, protect and promote human rights.<sup>89</sup> Some obligations require the State not to intervene while others require positive state intervention to provide assistance.

67 These types of obligations may be demonstrated by reference to an African case, *SERAC v Nigeria*,<sup>90</sup> heard by the African Commission on Human and Peoples Rights.

68 In the Niger Delta, there is an ethnic group called the Ogoni, numbering some half a million people, mainly farmers and fishermen. A large oil reserve was discovered in Ogoniland in 1958. One of the many joint ventures was between Nigerian Natural Petrol Corporation and Shell; the former had a 55% stake and so the Nigerian Government was heavily invested in this project. The complaint alleged that the Nigerian military Government had violated various socio-economic rights in failing to protect the right to health and the right to a clean environment, recognised in Arts 16 and 24 of the African Charter on Human and Peoples Rights<sup>91</sup> respectively. This was because it condoned and facilitated Shell Operations in Ogoniland.

69 The soil had become contaminated, the environment was damaged, pipelines were built through villages regardless of the fact that people were living there and the land which once bore food was now

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88 Perez Cisneros cited in Johannes Morsink, *The Universal Declaration on Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 2000) at p 184.

89 The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights January 22–26, 1997 <[http://www1.umn.edu/humanrts/instree/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html)> (accessed 18 May 2008).

90 No 155/96.

91 Adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), entered into force 21 October 1986.

infertile. The Commission found that the Nigerian Government had failed to protect – a sin of commission – the right to health and a clean environment as well as implied rights to housing and food. If you start having oil spills, and this destroys the natural ecology, what happens to the fish and grain? Where is the source of your livelihood and subsistence? Nigeria was guilty and the Commission recommended various remedies, though the efficacy of remedies is a separate issue. First, the Nigerian Government was ordered to cease attacks on Ogoni. What had happened was that the Nigerian Government had placed at Shell's disposal security forces which had gone around indiscriminately brutalising and killing Ogoni activists. The Government was to stop and investigate these attacks because failure to do so can violate due process rights. There was also a right to compensation and duties to make environment and social impact statements. The Ogonis were, however, not consulted; under human rights law and environmental law, part of the right to development requires that people be consulted before taking away their land and any replacement land must be equivalent, not inferior, in quality.

70 Here, the problems that can arise in relation to human rights and development are evident, because developing countries all desire foreign investment to propel economic growth. However, foreign investment activities can actually harm various communities, and balancing the respective interests is a difficult issue.

71 Thus, there are ways of measuring socio-economic rights violations. First, the State bears the onus to show it has made measurable progress, there must be minimum indicators. Progressive realisation obligations cannot be a pretext for non-compliance. Second, there are minimum core obligations relating to basic needs such as health and shelter, which a State must provide irrespective of the resources it has or the obstacles facing practical implementation. Third, there is a "violations based approach" which can stem from action or inaction, such as repealing social welfare legislation which is not replaced with adequate measures, or failing to prevent a transnational corporation from harming individuals.

72 The European Court of Human Rights has heard cases relating to socio-economic rights even though the ECHR does not contain such rights. This has primarily been under the auspices of the Art 8 right to privacy and a family life, through creative litigation strategy to incorporate the right to a healthy environment within its ambit. For example, in *Lopez Ostra v Spain*,<sup>92</sup> a disgruntled person complained about how the construction of a smelly tannery some 12m from his

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92 Application No 16798/90 [1994] ECHR 46 (9 December 1994).

house, violated the right to a family life. In *Hatton v UK*,<sup>93</sup> the complainant, living near London's Heathrow airport, was upset as frequent night flights prevented her from sleeping. She argued that the UK government had not sufficiently monitored these night flights, violating her Art 8 right to a private family life. The court held that Art 8 was violated but the reason that the court was so interventionist in the tannery case was because the tannery operated without a licence, which means it was in breach of existing domestic laws. Where there is such a breach, a regional court appears more comfortable towards intervening, as it is less likely to be accused of being over-interventionist. Thus, Art 8 does not give one a right to a house, but it may give one a right to a quiet life, which is not a bad thing.

73 Many cutting-edge cases on socio-economic rights tend to come from the South African Constitutional Court, the most famous of which is the *Grootboom* case.<sup>94</sup> This had to do with a place called Wallacedene, near Cape Town. The story is quite heart-breaking and one feels a bit helpless in the face of structural problems, as you cannot cure the ills of the world in one day. Article 26 of the South African Constitution provides: "Everyone has the right to have access to adequate housing." The State is required to "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right". A State can always point to its lack of financial wherewithal to qualify its performance.

74 This case is interesting from an administrative lawyer's perspective. The facts were these: Mrs Grootboom and 390 adults were living in a squatter camp which got water-logged; consequently, the children fell ill and the squatters sought somewhere else to live. They moved into some vacant land called Near Rust and set up temporary shacks. The owners of Near Rust got an eviction order and, without informing the squatters, demolished the shacks and all the squatters' belongings. There is a human rights norm that if you are going to evict someone, you should give them time to gather their belongings. They returned to the squatters' camp but their space had already been taken over. So, they went to a nearby sports field and put up plastic sheeting. When you are living under a plastic sheet, you really do not think about litigation, do you? Squatters could not afford Mr Michael Hwang's fees, for example.

75 Civil society organisations helped the squatters bring the case to court. The Constitutional Court cannot necessarily solve these problems but what is instructive is their approach to the problem. Essentially, the

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93 Application No 36022/97 (8 July 2003).

94 *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC).

court said that the Government could not be expected to solve the housing problem overnight (they are not the Housing and Development Board!) and even though there was some statistical success, it was not considered good enough. Following the formulation of Art 26, the court said that in the context of this right, there must be adequate access and reasonable measures.

76 This reads almost like a test of reasonableness applied through administrative review. In formulating a housing programme, there must always be a contingency plan for the poorest. The programme should deal with short, medium and long-term needs. The existing programme was deficient in not providing for people in crisis situations. Despite budget limits, there must be some provision for a contingency crisis fund, for example, for flood victims. While the court cannot solve the problem, it can provide good indicators to help government bodies formulate the best policy they can. It is like holding a conversation between Parliament, the Executive and the courts. In *Grootboom*, the court said that the government body did not cater to the short term and so the reasonableness clause in Art 26 was violated. The court was not looking for the best but a reasonable solution, of which there can be a range. The squatters had relief insofar as there was a declaration that the Government had to devise a plan to meet short-term needs.

77 While judges are unable to monitor their judgments for lack of time and technical expertise, there is now a new form of co-operation between courts and other non-judicial bodies in Africa and Latin America; for example, the South Africa Human Rights Commission was instructed to monitor and report back after a year as to whether the Government has implemented the court's judgment. Thus, the interplay of all these government bodies seeks to enhance social welfare provision.

78 As we know, the Housing and Development Board received the UN Public Service Award recently.<sup>95</sup> This sort of success has informed the Singapore human rights approach: in 1993, then Foreign Minister Wong Kan Seng said: "... we justify ourselves to our people, not by abstract theories or the approbation of foreigners, but by the more rigorous test of practical success."<sup>96</sup> The question then is: do we prefer a right to housing, or a house? A central justification of the Singapore approach is: "We deliver on social goods." Singaporeans do not, on a large scale, live under plastic sheetings and I do not think this is an inconsequential factor. In the ideal world, you can have everything, but the end of human rights, particularly socio-economic rights, is to get

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95 "HDB wins 2008 UN public service award", *The Straits Times* (24 June 2008).

96 "The Real World of Human Rights" 16 Vienna 1993, Singapore Government Press Release No: (20/JUN, 09-1/93/06/16) reproduced in [1993] Sing JLS 605 at 607 ("Vienna Statement").

these goods. Perhaps, because we have the goods, we in Singapore do not think about rights. However, human rights relate to every country in the world; we must avoid a parochial selfishness and need to remember that some people are going to sleep under a plastic sheet tonight.

### ***E. UDHR in Singapore politics***

79 There are many instances where the UDHR has been cited in both Parliament and the courts. Opposition politicians like Chiam See Tong, J B Jeyaretnam and Lee Siew Choh have invoked the UDHR to criticise legislation like the Misuse of Drugs Act and Internal Security Act, for example. The most interesting instance, which I think is fairly ridiculous, is when Lee Siew Choh criticised the half-tank rule and said that penalising cars which go to Johore Bahru to buy gas with less than a half-tank violates the freedom of movement in the UDHR,<sup>97</sup> which is a radical interpretation of the text. This illustrates how human rights are often used as a rhetorical flourish

### ***F. UDHR in Singapore courts***

80 Let us examine some Singapore cases before I conclude this lecture. As far as *locus standi* is concerned, my mother, Dr Thio Su Mien, is the expert on this, as this is the subject of her doctoral dissertation.<sup>98</sup> Many years on, Singapore actually has a good record on standing. The usual common law rule is predicated on the principle that an applicant must have a “sufficient interest” to bring a case to court. This is the private law model. In *Colin Chan v MITA*,<sup>99</sup> the Court of Appeal stated that where constitutional rights are involved, a person does not have to be specially affected to have standing; it said that “any citizen” can go to court when a constitutional right has been violated, even if it is not his constitutional right violated, as we all share a common interest in upholding the Constitution. This is a broad rule of standing.

81 As far as judicial review is concerned, the courts tend to take a broad berth in relation to security issues. In non-security issues, we need to understand the underlying theories the courts adopt. Do courts construe the Pt IV fundamental liberties section liberally or literally? Is it more pro-rights or more pro-community and State? Is the court

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97 54 *Singapore Parliament Reports* (7 April 1989) Customs (Amendment) Bill col 59ff at 73.

98 Thio Su Mien, *Locus Standi and Judicial Review* (Singapore University Press, 1971).

99 *Colin Chan v Minister for Information and the Arts* [1996] 1 SLR 609.

acting as an umpire between two equal parties or does it adopt a guardianship role to protect vulnerable individuals?<sup>100</sup>

82 From Singapore case law, a literal approach is not required. Take, for example, Art 9(1) which provides: “No person should be deprived of his life or liberty, save in accordance with law.” What does “law” mean in this context? Is it simply any law that Parliament enacts, following the stipulated procedure? Parliament can enact a law providing for death by public guillotine or crucifixion? In *Ong Ah Chuan v PP*,<sup>101</sup> the Privy Council said that “law” in the Constitution, in Art 9 and Art 12, for example, refers to fundamental rules of natural justice. This decision was delivered in 1981 and there are at least four ways in which we may understand this, but that is not the subject of the lecture today. For example, the argument is that as a facet of constitutional norms of natural justice, you have a right to be told that you have a constitutional right. Article 9(3) provides for the right to counsel but, unfortunately, the Singapore courts have held that you do not have a right to be told of your right to counsel.<sup>102</sup> This is not a very generous interpretation of Pt IV.

83 The height of legal positivism, the notion that the law is whatever the State says it is, regardless of its substantive content, was reached in *Jabar v PP*<sup>103</sup> which concerned whether the “death row phenomenon” constituted the deprivation of life in a manner not in accordance with the law. There, Yong CJ said:

Any law which provides for the deprivation of a person’s life or personal liberty is valid and binding so long as it is validly passed by Parliament. The court is not concerned with whether it is also fair, just and reasonable as well.

84 This, to me, is very troubling proposition, as there must be common law and constitutional law values which limit Parliament, which is not supreme in Singapore; the Constitution is, and the courts should focus more on developing constitutional values. However, the Court of Appeal in *Nguyen Tuong Van v PP*<sup>104</sup> (“*Nguyen*”) subsequently stated that “in accordance with law” connoted something “more than just Parliament-sanctioned legislation”.<sup>105</sup> Constitutionalism cannot be equated with bare legalism, and this is an area still awaiting maturation in Singapore constitutional discourse.

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100 Li-ann Thio, “Beyond the Four Walls” in “Age of Transnational Judicial Conversations: Civil Liberties, Rights Theories and Constitutional Adjudication in Malaysia and Singapore” (2006) 19.2 Colum J Asian L 428.

101 [1981] 1 MLJ 64.

102 *Rajeevan v PP* (1998) 1 SLR 815; *Sun Hongyu v PP* [2005] 2 SLR 750.

103 [1995] 1 SLR 617 at [53].

104 [2005] 1 SLR 103.

105 [2005] 1 SLR 103 at [82].

85 When construing the right to life, it is interesting to note that one adventurous Malaysian judge has imported in Indian jurisprudence to construe it broadly. In Singapore, this right usually relates to matters like the death penalty. In Malaysia, Gopal Sri Ram JCA in *Tan Tek Seng*<sup>106</sup> has defined the right to life as being broad enough to encompass a right to livelihood, as well as the right to food and shelter. Perhaps one reason why courts in certain countries are apt to construe the right to life so broadly is because in poorer countries, courts are sites for social justice. We do not see this in Singapore perhaps because of the relative wealth of the country.

86 In a related vein, there was a very interesting Pakistan case<sup>107</sup> which concerned plans to build an electricity grid. The Rio Declaration was cited in an attempt to forestall this plan, as there were health fears relating to electricity grids. The courts stated that while without scientific expertise, it would call for a public consultation on whether to build an electricity grid and it would convene a committee of scientists to report on the risks involved. This was litigated on the basis of the right to life in the Pakistan Constitution, which, like the similar right in the Indian and Sri Lankan Constitution, is similar to how the Malaysian and Singapore equivalent clause is drafted, stemming from their common genesis and histories as British colonies.

## V. International law and common law in Singapore

87 International law can influence common law. The Court of Appeal in *Nguyen*<sup>108</sup> stated:

The common law of Singapore has to be developed by our Judiciary for the common good ... Any customary international law rule must be clearly and firmly established before its adoption by the courts. The Judiciary has the responsibility and duty to consider and give effect to any rule necessarily concomitant with the civil and civilised society which every citizen of Singapore must endeavour to preserve and protect.

88 This suggests that CIL is part of Singapore law, which is an important statement given that previous cases have ignored references to international law. Clear norms of CIL are part of Singapore law, but how do we identify these unwritten international law rules?

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106 *Tan Tek Seng v Suruhanjaya Perkhidmaan Pendidikan* [1996] 1 MLJ 261 at 288, citing *Olga Tellis v Bombay Municipal Council* [1985] 2 Supp SCR 51 (Supreme Court, India).

107 *Sheila Zima v WAPDA* 1994 SC 693.

108 [2005] 1 SLR 103 at [88].

89 CIL comprises two basic components: what States do and what States “think”, *ie*, state practice found in diplomatic statements, national legislation, the number of treaty ratifications, *etc*, and *opinio juris*, where a State acts in a certain manner not because of expedience but out of a sense of legal obligation. The question then is whether the UDHR (or some of its norms) has satisfied these two components of international legality. Human rights norms accepted as bearing CIL status include genocide, slavery, large scale murder (not single instances), large scale torture, arbitrary detention, racial discrimination, *etc*.<sup>109</sup>

90 In deciding whether a norm is CIL and applies in the Singapore context, four questions need to be addressed. The first issue relates to *status*: whether a particular norm bears the status of CIL? For example, one of the issues arising in *Nguyen*<sup>110</sup> was whether Art 36(1) of the Vienna Convention on Consular Relations (to which Singapore was not then a party) was CIL. Under this Convention, a State which arrests a foreign national has a duty to inform the relevant consular officer. The court found it was CIL, noting that Singapore, though not a party to the treaty, modelled its standard operating procedure after it, followed it in practice and the prosecuting officer did not raise any objections to the contrary. Silence can in international law be taken as acquiescence.

91 The second issue relates to *reception*: is a CIL norm part of Singapore domestic law? Does Singapore follow the monist system, where international laws directly apply, or a dualist system, where international law needs a further act of incorporation before having domestic effect? The third issue relates to *application*, which is an evaluation of whether a CIL norm has been breached on the case facts. The last issue relates to questions of *hierarchy*: even if the CIL norm has been breached on the facts, does domestic or international law prevail?

92 *Nguyen* is the best case study on these issues to date. The issue there was whether the mandatory death penalty under the Misuse of Drugs Act contravened Art 5 of the UDHR which provides: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The court demonstrated a monist sensibility in stating that: “Any customary international law rule must be clearly and firmly established before its adoption by the courts.” It held that Art 5 of the UDHR did in fact embody CIL.

93 It was invoked in aid of interpreting Art 9(1): “No person shall be deprived of his life or personal liberty save in accordance with *law*.” “Law” includes international law. The purposive generous interpretation being contended for would require a reading of Art 9(1) as providing

109 US Restatement §702; see also the *Barcelona Traction* case (1970) ICJ 3 at 323.

110 [2005] 1 SLR 103.

“no deprivation of life in a manner which violates the prohibition against torture, cruel and inhumane treatment.” Singapore courts accepted that Art 5 of the UDHR, not the entire document, was CIL. However, the court held that death by hanging did not constitute a deprivation of life in a cruel or inhumane manner. There was an absence of consensus on this matter, as reflected in certain US cases cited to demonstrate there was no settled view on this point. Clearly, the courts are more internationalised, in getting used to the language of human rights law, and in pointing out that the number of States retaining the death penalty was about equal to the number of abolitionist States, citing a UN Commission on Human Rights report.<sup>111</sup> When all the States in the world have abolished the death penalty, one could argue that is a customary norm prohibiting it, but the existing law would not support such a conclusion today, contrary to the views of some.<sup>112</sup>

### A. Questions of hierarchy

94 What about issues of hierarchy? Article 5 of the UDHR is CIL and certainly applies in Singapore. What happens if CIL clashes with a Singapore statute like the Misuse of Drugs Act? The court in *Nguyen* appeared to follow the English approach: where there is a clash between a CIL rule and a statute, the statute prevails in the event of inconsistency. This is appropriate if Parliament is supreme; Parliament is not supreme in Singapore, the Constitution is. We cannot blindly follow English cases and discount Art 4 of the Singapore Constitution. The Court of Appeal stated:<sup>113</sup>

We agree with the trial judge’s reasoning on the effect of a conflict between a *customary international law rule and a domestic statute*. The trial judge held that even if there was a customary international law rule prohibiting execution by hanging, the domestic statute providing for such punishment, *viz*, the MDA, would prevail in the event of inconsistency.

95 Is an international law rule incorporated as part of the common law or part of constitutional law? If it is received as part of the common law, then any inconsistent statute trumps the common law, except where a *jus cogens* (peremptory norm) is involved, such as that prohibiting genocide. As a fundamental value, derogations from it can never be justified.

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111 Question of the Death Penalty: Report of the Secretary-General submitted pursuant to Commission resolution 2002/77 UN ESCOR, 59th Sess, UN Doc E/CN.4/2003/106 (2003).

112 William Schabas, *The Abolition of the Death Penalty at International Law* (Cambridge University Press, 2002).

113 [2005] 1 SLR 103 at [94].

96 What if an international law norm is incorporated as part of the Constitution, such as being read into Art 9? The Constitution must trump statute. This issue was not directly dealt with in *Nguyen* and the matter awaits future clarification. If our Constitution had an express provision relating to international law and how this relates to domestic law, things would be easier.<sup>114</sup>

### B. *The UDHR and public law arguments*

97 Why might the UDHR norms be invoked in constructing public law arguments?<sup>115</sup> One reason is to use a UDHR norm to establish a rule of decision in interpreting a right. For example, in the Bangladesh Supreme Court decision of *Tayazuddin*,<sup>116</sup> a man who had thrown acid on a woman sought bail; the court said that in reading the right to liberty in the Bangladesh Constitution with Art 3 of the UDHR (life, liberty and security), what must be borne in mind is not only does this accrue to the accused but also to the victim. If she cannot give evidence without fear of further repercussions on herself or her family, it violates the human right to life and security. International law influenced the final decision, which was not to grant bail. In the Singapore context, when a human rights argument is raised, this underscores the importance of a fundamental right, accentuating that right's importance in attempting to influence the constitutional balancing approach. However, in previous cases such as *Colin Chan v PP*,<sup>117</sup> the judge ignored international law arguments based on Art 18 of the UDHR, the religious freedom clause.

98 Finally, the UDHR was invoked in a case<sup>118</sup> relating to an article published by the Far Eastern Economic Review ("FEER") entitled "Chee Soon Juan – Singapore's Martyr" This was said to be libelous of the Prime Minister Lee Hsien Loong and Minister Mentor Lee Kuan Yew, who sued for defamation. The FEER wanted to bring in a Queen's Counsel, to face Senior Counsel Davinder Singh.<sup>119</sup> The argument was

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114 *Cf.* Romania Constitution Art 20: "(1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions."

115 See Thio Li-ann, "Reading Rights Rightly: The UDHR and its Creeping Influence on the Development of Singapore Public Law" [2008] Sing JLS 264.

116 ILDC 479 (Bangladesh, 2001).

117 [1994] 3 SLR 662.

118 *Re Millar Gavin James QC* [2008] 1 SLR 297.

119 "The principle of equality of arms, it was submitted, was a fundamental part of any fair trial guarantee. In a defamation case of any complexity or difficulty, therefore,  
(cont'd on the next page)

raised in the context of urging the court to give the QC a practising certificate under s 21 of the Legal Professions Act.<sup>120</sup> The justification was that the issues involved were complex and that FEER wished to advance the novel defence of neutral reportage, as articulated in the House of Lords decision of *Reynolds v Times Newspaper*.<sup>121</sup> A QC was needed, defence counsel argued, since the other side had a Senior Counsel, to satisfy the principle of the equality of arms as a facet of the right of fair trial embodied in Art 10 of the UDHR. Defence counsel, in citing Art 10 of the UDHR, was making a substantive argument that “equality of arms” was a facet of a right of fair trial.<sup>122</sup>

99 For Art 10 of the UDHR to be applicable, it would need to be shown that it embodied CIL. But the proffered theory was to say the least, perplexing. I am going to have to write an article about it, to torment students with. It was argued that:<sup>123</sup>

[T]he court should take into account the need for a level playing field between the parties to the defamation suits. They submitted that Singapore, as a member state of the United Nations, was bound by the United Nations Charter to respect the standards laid down in the Universal Declaration of Human Rights (art 10).

100 What is the theory of bindingness of this apparent international legal obligation? First, the suggestion seems to be that because Singapore is a member of the UN, it should (as a matter of treaty law?) be subject to UDHR standards, which is a product of the UN General Assembly, perhaps treating the UDHR as an authoritative interpretation of the UN Charter. However, General Assembly resolutions are not generally binding but recommendatory in nature.

101 Second, perhaps Art 10 of the UDHR was being invoked as a CIL rule which is binding on Singapore. Assuming that Art 10 of the UDHR may be received into the domestic legal order, for what purpose was it invoked? Three possibilities come to mind. First, to ground an independent human right to a fair trial; this is because Part IV does not contain a right to fair trial. In that sense it would argue that customary human rights law forms part of constitutional law and can enlarge the existing list of enumerated rights. Secondly, it could possibly be invoked in pleading an implied constitutional right, drawing from the accepted

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it was likely that this principle would be breached where there was disparity between the respective levels of legal representation.”

120 Cap 161, 2001 Rev Ed.

121 [2001] 2 AC 127.

122 UDHR Art 10 reads: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

123 [2008] 1 SLR 297 at [8].

principle of the rule of law, to which a fair trial is integral. There have been similar arguments to the effect that there is an implied constitutional right to vote, drawing from the constitutional structures and practices which frame the practice of representative democracy. Last, the principle of equality of arms as a facet of fair trial could be invoked as a relevant consideration in the administrative review of discretion under s 21 of the Legal Professions Act.

102 I offer this preliminary analysis as food for thought. In closing, I will only say that the court seemed to accept and consider the argument of equality of arms in concluding that it was not breached here and that the principle itself did not mandate having counsel of equal standing as an inevitable factor, as all case circumstances had to be considered.

## **VI. Concluding remarks**

103 In celebrating the 60th Anniversary of the UDHR this year, we would do well to consider that the law human beings produce shows both a capacity for compassion and a proclivity for cruelty. Human rights law focuses us on the need for conscience and reason in legal reasoning, in thinking through what ought to be done, and what must be done for people. Human rights law is a branch of law which speaks to the kind of human society we want and, so, what it means to be human.

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